CCP Printing, L.L.C., d/b/a Craftlink Printing *and* St. Louis Typographical Union No. 8/CWA 14616 affiliated with Communications Workers of America, AFL–CIO. Case 14–CA–27642

April 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge, amended charge, and second amended charge filed by the Union on November 3, 2003, and January 15 and 28, 2004, respectively, the General Counsel issued the complaint on January 29, 2004, against CCP Printing, L.L.C., d/b/a Craftlink Printing, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 18, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On March 22, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by February 12, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 5, 2004, notified the Respondent that unless an answer was received by March 10, 2004, a Motion for Default Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation, with an office in Creve Coeur, Missouri, and a facility in St. Louis, Missouri (the facility), has been engaged in the commercial printing business.

During the 12-month period ending August 1, 2003, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 for Emerson Electric, Milliken Publishing, and other enterprises located within the State of Missouri, each of which are directly engaged in interstate commerce and satisfy other than an indirect standard for the assertion of the Board's jurisdiction.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that St. Louis Typographical Union No. 8/CWA 14616 affiliated with Communications Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Kevin Short held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The unit of employees of the Respondent set forth in the collective-bargaining agreement described below constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since February 14, 2003, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since then, the Union has been recognized as such representative by the Respondent. This recognition is embodied in a collective-bargaining agreement effective by its terms from March 1, 2003 to February 28, 2006.[2]

At all times since February 14, 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about August 21, 2003, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by failing and refusing to

[1] The Respondent's president advised the General Counsel in a telephone conversation on March 10, 2004, that the Respondent would not be filing an answer to the complaint, and that he was aware that the consequence for failing to file an answer would be a motion for default judgment.

[2] The date has been corrected to conform to the date set forth in the agreement rather than the complaint.

pay unit employees for accrued vacation and severance pay. The Respondent engaged in this conduct without the Union's consent.

The terms and conditions of employment set forth above are mandatory subjects for the purpose of collective bargaining.

About August 21, 2003, the Respondent ceased operations at its facility and terminated all unit employees. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain over the effects of this conduct.

About August 22 and 28, September 22, October 6, 2003, and January 13, 2004, the Union, by telephone or letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit over the effects on the unit of the decision to cease operations and the resulting terminations.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since August 21, 2003, the Respondent has failed and refused to bargain with the Union over the effects on the unit of its decision to cease operations and the resulting discharges.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the agreement by failing and refusing to pay unit employees for accrued vacation and severance pay since August 21, 2003, we shall order the Respondent to make whole unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, to remedy the Respondent's unlawful failure and refusal to bargain with the Union over the effects of the Respondent's decision to cease operations and terminate all unit employees at its St. Louis, Missouri facility, we shall order the Respondent to bargain with the Union, on request, over the effects of its decision. As a result of the Respondent's unlawful failure to bargain in good faith with the Union over the effects of its decision to cease its business operations, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the purposes of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[3]

Thus, the Respondent shall pay the unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 business days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business at the facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the fact that the Respondent ceased operations at its St. Louis, Missouri facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of unit employees employed by the Respondent on or after August 21, 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, CCP Printing, L.L.C., d/b/a Craftlink Printing, Creve Coeur, Missouri, and St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect the collective-bargaining agreement with the St. Louis Typographical Union No. 8/CWA 14616 affiliated with Communications Workers of America, AFL–CIO, effective by its terms from March 1, 2003, to February 28, 2006, by failing and refusing to pay accrued vacation and severance pay to the employees in the appropriate unit set forth in the agreement.

(b) Ceasing operations and terminating all unit employees at its St. Louis facility without prior notice to the Union and without affording the Union an opportunity to bargain over the effects of the closing and terminations on unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay accrued vacation and severance pay, since August 21, 2003, with interest, as set forth in the remedy section of this decision.

(b) On request, bargain with the Union over the effects on the unit employees of the Respondent's decision to cease operations and terminate all unit employees at its St. Louis, Missouri facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(c) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[4] to the Union and to all unit employees employed on or after August 21, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2004

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Robert J. Battista, Chairman

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Dennis P. Walsh, Member

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Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to continue in effect our collective-bargaining agreement with the St. Louis Typographical Union No. 8/CWA 14616 affiliated with Communications Workers of America, AFL–CIO, effective by its terms from March 1, 2003, to February 28, 2006, by failing and refusing to pay accrued vacation and severance pay to employees in the appropriate unit set forth in the agreement.

WE WILL NOT cease operations and terminate our unit employees at our St. Louis facility without prior notice to the Union and without affording the Union an opportunity to bargain over the effects of the closing and terminations on our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to pay accrued vacation and severance pay since August 21, 2003, with interest.

WE WILL, on request, bargain with the Union over the effects on our unit employees of our decision to cease operations and terminate all unit employees at our St. Louis, Missouri facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees limited backpay in connection with our failure to bargain over the effects of our decision to cease operations and terminate our unit employees at our St. Louis, Missouri facility, as required by the Decision and Order of the National Labor Relations Board.

CCP PRINTING, L.L.C., D/B/A CRAFTLINK PRINTING